**IN THE HIGH COURT OF GAUHATI (AGARTALA BENCH)**

WP (C) No. 26 of 2012

Decided On: 29.06.2012

Appellants: **Muzaffar Alam Sekendar**
**Vs.**
Respondent: **State of Tripura & Ors.**

**Hon'ble Judges/Coram:**S.C. Das, J.

**JUDGMENT**

**S.C. Das, J.**

1. Heard learned counsel, Mr. A. Paul for the petitioner and learned Advocate General, Mr. D.P. Kundu, assisted by learned counsel, Miss R. Guha for the State respondents. Today a petition is filed on behalf of the respondents, seeking rectification of order, dated 21.06.2012 passed by this Court, on the ground that the submission of the learned counsel of the respondents has not been reflected properly. Order dated 21.06.2012, passed by a Single Bench of this Court, presided over by the learned Single Judge, reads as follows:

21.06.2012

Heard Mr. A. Pal, learned counsel, for the petitioner, and Mr. T.D. Mazumder, learned counsel, for the respondents.

Considering the fact that the respondents have not yet filed their counter affidavit, despite repeated directions given in the writ petition, this writ petition would be taken up for disposal without counter having been filed by the respondents.

Let this writ petition be listed, on 28.06.2012, for the purpose of final disposal, under the heading admission.

2. While the case was taken up on 28.06.2012, learned counsel, Mr. Paul has drawn the attention of this Court to order dated 21.06.2012 and prayed for taking up healing of the case. On the other hand, learned counsel, Miss Guha has submitted that her prayer before the Court on 21.06.2012 was not properly reflected, and therefore, she prayed for allowing the respondents to submit counter affidavit.

Since there was specific order passed by this Court for hearing of the matter without counter affidavit, the matter was taken up for hearing with an observation that the order passed by this Court cannot be disputed in the manner as submitted by learned counsel, Miss Guha. It is settled law that Judges' records are conclusive. If anybody likes to dispute, should draw the attention of the Court, which passed the order. The respondents failed to draw the attention of learned Single Judge of the particular Bench of this Court, which passed order dated 21.6.2012, and under such circumstances, the petition filed on behalf of the respondents cannot be considered and is rejected, and the writ petition is heard on merit.

3. Petitioner's case, in short, is that pursuant to an admission Notice, dated 23.12.2011 (Annexure-P.1 colly to the writ petition), published by the Headmaster, Shishu Bihar H.S. School, Agartala, inviting applications for admission of the students, both in Nursery and Class-I (boys and girls), the petitioner also collected prescribed forms from the School for his son, namely Master Ayush Simon Choudhury for admission in Class-I and daughter Miss Mehjabin Choudhury for admission in Nursery and, in due course, the filled-in forms were submitted to the school. Particulars of the candidates/ students for such admission was published by a Notice dated 24.12.2011 (Annexure-P.1 colly to the writ petition).

4. It is contended by the petitioner that Shishu Bihar H.S. School is situated in Ward No. 13 of Agartala Municipal Council and the petitioner is a permanent resident of the said ward. As per provisions of the Right to Education Act, 2009 (for short, the Act of 2009) and Rules framed thereunder (The Right of Children to Free and Compulsory Education Rules (Tripura), 2011 (for short, the Rules of 2011), the children of the petitioner have got right accrued in their favour to avail the scope of getting them admitted in Shishu Bihar H.S. School, being a school of their neighbourhood. The Inspector of Schools, vide a Notification, dated 02.12.2011 (Annexure-P.3 colly to the writ petition), notified neighbourhood of the schools, including that of Shishu Bihar School, thereby, incorporating areas from other wards of Agartala Municipality, apart from Ward No. 13, which is contradictory to the definition of the word, "neighbourhood" as defined in Rule 2(1)(j) of the Rules of 2011. The respondents invited and accepted applications for admission of students, who are the residents of other wards than that of Ward No. 13 and arranged a combined lottery, taking into consideration the applications of all candidates, and as a result, scope of the petitioner's children to get a selection through lottery was diminished and got frustrated. According to Rules, the respondents would first arrange lottery for the candidates/ students, who are the residents of Ward No. 13, and thereafter, if any seat remain vacant, then only the applications of the students of other wards would be entertained. The petitioner, therefore, prayed for quashing the entry made in Column No. 6 of the Notification dated 02.12.2011, and also prayed for issuing direction to the respondents to arrange lottery first from the children of Ward No. 13, and then for the children of other wards.

5. For ready reference and for fair appreciation, let us reproduce here the relevant provision of the Act and Rules.

Section 3(1) of the Act prescribes thus:

3.(1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Section 6 of the Act prescribes thus:

6. For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

Rule 2(1)(j) of the Rules of 2011 prescribes thus:

2.(1)(j) "Neighbourhood", subject to the provisions of part IV of theses rules, shall mean a ward for an area under the Agartala Municipal Council or any Nagar Panchayat, or any Gram Panchayat or village of TTAADC or part thereof in a rural area as may be notified by the State Government from time to time under Section 6 of the Act.

Rule 10 of the Rules prescribes thus:

PART IV-DUTIES OF STATE GOVERNMENT, LOCAL AUTHORITY

Areas or limits for the purpose of section 6.

10.(1) The areas or limits of neighbourhood within which a school has to be established by the State Government shall be as under-

a) In respect of children in classes I-V, a school shall be established within a walking distance of one km of the neighbourhood.

b) In respect of children in classes VI-VIII a school shall be established within a walking distance of three kms of the neighbourhood.

(2) Wherever required, the State Government shall upgrade existing schools with classes I-V to include classes VI-VIII. In respect of schools, which start from class IV onwards, the State Government shall endeavor to add classes I-V, wherever required.

(3) In areas with difficult terrain, risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school, the State Government/Local authority shall locate the school in such a manner as to avoid such dangers, by relaxation of the limits specified under sub-rule (1).

(4) For children from small hamlets, as identified by the State Government or Local Authority, where no school exists within the area or limits of neighbourhood specified under sub-rule (I) above, the State Government or Local Authority shall make adequate arrangements, and other facilities, for providing elementary education in a school, in relaxation of the limits specified under sub-Rule (I).

(5) In urban areas and areas with high population density, the State may consider establishment of more than one neighbourhood school, having regard to the number of children in the age group of 6-14 years in such areas in consultation with the Local Authority. The IS shall notify the neighbourhood schools(s) accordingly well in advance of admission process.

(6) The Local Authority shall identify the neighbourhood school(s) where children can be admitted and make such information public for each habitation within its jurisdiction.

(7) In respect of children with disabilities which prevent them from access to the school, the State Government and Local Authority will endeavor to make appropriate arrangements for them to attend school and complete elementary education."

6. The petitioner challenged Column No. 6 of the Notification dated 02.12.2011, issued by Inspector of Schools, defining the "neighbourhood" of Shishu Bihar School for admission of students in Nursery and Class-I. Entry No. 73, in respect of Shishu Bihar School, for admission in Nursery and Class-I, as reflected in the Notification (Annexure-P.3 to the writ petition), reads thus:



7. It is an undisputed fact that Shishu Bihar School is located in Ward No. 13, under Agartala Municipality. It is also not disputed that the petitioner and his children are residents of Ward No. 13 under Agartala Municipal Council. Naturally, they have the right to education in the nearest Nursery/Primary School of their residence. Now, only question to be decided as to whether by issuing impugned Notification dated 02.12.2011, defining "neighbourhoods" for the purpose of admission in nursery/primary level in Shishu Bihar H.S. School, the provisions of the Act and Rules are violated or not.

8. Learned counsel, Mr. Paul, with all emphasis, has submitted that the word "neighbourhood" has been defined with specific assertion that it shall mean "a ward" for an area under Agartala Municipal Council and so on, whereas, Notification dated 02.12.2011, defining areas as against Shishu Bihar H.S. School, consists area from other wards of Agartala Municipal Council, therefore, it was beyond the scope of definition of "neighbourhood" and the children from those areas, other than Ward No. 13, may be admitted only, when the children of Ward No. 13 are all admitted in the school.

9. Learned Advocate General, Mr. Kundu has submitted that the definition of 'neighbourhood', appearing in Rule 2(1)(j) of the Rules, should be read together with the provisions of Rule 10 and the broader perspective of Right to Education Act and the Rules framed thereunder. A narrower meaning of the word, 'neighbourhood' as explained by learned counsel, Mr. Paul, will definitely frustrate the purpose, since the children of one km radius of the school will be deprived of enjoying their right to have their education in the school. Learned Advocate General, referring to Sections 11 and 13 of the General Clauses Act, 1897, has submitted that the measurement of any distance shall be in a straight line on a horizontal plane, unless a different intension appears in the Act and the word singular shall include the plural and vice versa.

10. On meticulous examination of the provisions of Act and Rules and Annexure-P.3 to the writ petition, it appears that the Inspector of Schools has been authorized under Rule 10(5) of the Rules to notify the "neighbourhood" of schools and Notification, dated 02.12.2011, cannot be said to be beyond jurisdiction.

11. Section 3(1) of the Act of 2009 prescribes that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school. Section 6 prescribes that the area or limits of the neighbourhood may be prescribed by the appropriate Government or the local authority. The Rules of 2011 framed by the State Government, being the appropriate Government, as has been empowered under Section 38 of the Act. Rule 10(1) of the Rules of 2011 prescribes that in respect of children in Class-I to Class-V, a school shall be established within a walking distance of one km of the neighbourhood. The word 'neighbourhood' has already been reproduced above.

12. Ward No. 13 of Agartala Municipality consists of a big area. It is not made clear in the writ petition as to whether the house of the petitioner is within one km radius of Shishu Bihar H.S. School or not. The only emphasis of the petitioner is that he is a resident of Ward No. 13, where the school is located. The children of the petitioner have got a prerogative, being a resident of Ward No. 13, to get admission in Shishu Bihar H.S. School, over and above, the children of the neighbouring other wards of one km radius from the location of the school.

13. If we carefully read the definition of 'neighbourhood', it would appear that the definition is subject to the provision of Part-IV of the Rules i.e. the provision of Rule 10 of the said Rules, Rule 10(1)(a) clearly specified that for the children of Classes-I to V, a school shall be established within a walking distance of one km. Learned counsel, Mr. Paul contends that it is for the newly established schools and not for the schools already in existence. I cannot agree with the submission of learned counsel on this score. The provision is applicable for the existing schools as well as future schools to come up. The provision should be read as a whole. It will not be proper to single out a part of the provision to give it a different meaning. The words, 'a ward' do not necessary mean that only the children of a particular ward will be entitled to get admitted in a particular school, giving goodbye to the other adjoining areas or localities within one km radius.

14. The word, 'a' has varying meanings and uses. "A" means "one" or "any", but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a greater number. The article "a" is not necessarily a singular term; it is often used in the sense of "any", and when so used may be applied to more than one individual object. The indefinite article "a" may sometimes mean one, where only one is intended, or it may mean one of a number depending upon the context.

15. A 'ward' specified in the definition of 'neighbourhood' does not necessary mean a specific particular. In the context it may have a wider meaning. While the Act prescribes that the children of any locality shall have a right to education in a neighbourhood school, and the Rule prescribes that the children residing within one km area should have a right to have admission in the school, the right of the children living in the neighbourhood areas of one km will be deprived from availing the scope of admission if the meaning of 'a ward' is confined to a singular number. Shishu Bihar School is admittedly in a corner of Ward No. 13. It has got other wards also within one km radius of the location of the school. So, the Inspector of Schools specified the area consisting of more than one ward. It has extended the scope for the children residing in one km radius neighbourhood of the particular school. Therefore, the area defined in Column 6 of Annexure-P.3 cannot be termed as illegal and beyond jurisdiction. No doubt, the definition of 'neighbourhood' as appeared in Rule 2(1)(j) is confusing and does not appear to be consistent with the provision as prescribed in Part-IV of the Rules, but in my considered opinion, it will not be proper to single out the words, 'a ward' from the definition of 'neighbourhood' and to give emphasis with a narrower meaning as intended by the petitioner. It is a settled law that the words in statute must be understood in the sense, which the legislature has in view and not so much in strictly grammatical or etymological propriety of language of popular sense. The Apex Court in the case of New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar reported in  : AIR 1963 SC 1207, observed that the expression used in legislation should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical or popular meaning, the Court should interpret which carry out the object of Legislation.

The Supreme Court, while dealing with a matter under Section 138 of Negotiable Instruments Act, in the case of Shri Ishar Alloy Steels Ltd. Vs. Jayaswals NECO Ltd. reported in  : (2001) 3 SCC 609, had the occasion to express observation on the words, "a bank" and "the bank" as appeared in Section 138 of N.I. Act. The Court observed--

The use of the words "a bank" and "the bank" in Section 138 of N.I. Act is an indicator of the intention of the legislature. The former is an indirect article and the latter is prefixed by a direct article. If the legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is prefixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account.........

16. In my considered opinion, in the context of the case at hand, "a ward", for the purpose of definition of "neighbourhood", shall mean the areas, within one km radius of a ward of Agartala Municipal Council, or any Nagar Panchayat, or any Gram Panchayat or TTAADC village, etc, and not otherwise. In view of the discussions made above, I have no hesitation to arrive at a conclusion that the petitioner has failed to make out a case to invoke writ jurisdiction of this Court and the writ petition therefore stands dismissed but in the circumstances without costs.